IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 29080 OF 1995

Dated 14th November, 2006

Between
Aitipamula Shivalingam and another.

… Petitioner

And

The Sub-Collector, Bhongir,
Nalgonda District and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioners seek a writ of certiorari to call for the records pertaining to order dated 1-10-1994 passed in Case No. C/2711/94 on the file of the Sub-Collector, Bhongir and for further direction for deletion of the name of the 3rd respondent from the revenue records with regard to the agricultural lands covered by Sy Nos. 488 and 269 of Valigonda village of Nalgonda District.

The petitioners are sons of one late Aitipamula Kistaiah S/o Papaiah, resident of Valigonda. They are the sons through deceased first wife of late Kistaiah, whereas 3rd respondent is the second wife of late Kistaiah i.e. stepmother of the petitioners. Kistaiah was the owner and possessor of agricultural lands covered by Sy.Nos. 269, 373, 376, 488, and 489 to an extent of Ac.15.88 situated at Valigonda village and Mandal of Nalgonda District.

The third respondent herein made an application to the recording authority under A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971 to record her name as pattadar and possessor with regard to lands covered by Survey No. 488 admeasuring Ac.5.00 and Survey No.269 admeasuring Ac.1.16 gts on the ground that late Kistaiah has bequeathed the above said lands during his life time by registered Will Deed executed on 20th October, 1978. Kistaiah expired in the year 1981. The Recording Authority under the provisions of the Record of Rights Act has conducted enquiry and ordered for change of entries in favour of 3rd respondent to the extent of land covered by Will in Survey Nos. 488

and 269. Aggrieved by the said orders, the petitioners have carried the matter in appeal before the appellate authority i.e. the Sub-Collector, Bhongir, who had dismissed the appeal by order dated 1.10.1994 passed in Case No.C/2711/94.

It is evident from the pleadings on record that with reference to the very same lands which are subject matter of the Will and the proceedings before the authority under Record of Rights Act, 1971,the 3rd respondent filed suit in O.S.No.14 of 1983 on the file of the District Munsif, Ramannapet, in which she sought for perpetual injunction against the petitioners. It is stated that the said suit was subsequently decreed. During the pendency of the proceedings under Record of Rights Act, petitioners also filed suit for partition and separate possession by including all the properties left by late Kistaiah including the lands covered by two survey Nos. i.e. 488 and 269 for partition and separate possession. The appellate authority under the provisions of the Record of Rights Act, by the impugned order, dismissed the appeal preferred by the petitioners by approving the change of entries as ordered by the recording authority basing on the registered Will claimed by the 3rd respondent.

In this writ petition, it is submitted by the learned counsel for the petitioners that the said Will is vitiated and fabricated document and the authorities ought not to have ordered for change of entries to record the name of 3rd respondent basing on the said Will. It is further submitted that the petitioners were not given notice before making such entries.

On the other hand, it is submitted by the learned counsel appearing for the 3rd respondent that for an authority under the Record of Rights Act, it is not open to make a roving enquiry with regard to the genuineness of the Will. If the petitioners are

aggrieved, they can very well approach the competent civil court by instituting civil suit under Section 8(2) of the Record of Rights Act, in which event, entries have to be amended as per the decree to be passed.

In this case, the relationship of the parties is not in dispute. While the petitioners are the sons of late Kistaiah through his first wife, 3rd respondent is the second wife of late Kistaiah i.e. the stepmother of the petitioners. Change of entries in the record of rights is sought basing on the registered Will executed by late Kistaiah to the extent of Ac.5.00 and Ac.1.16 gts covered by two Survey Nos. 488 and 269, respectively. Though the petitioners have also filed suits subsequently for partition and injunction, but they have never questioned the validity of the Will on any ground. The said Will is a registered document and in that view of the matter, the recording authority has rightly considered the same and ordered for change of entries. Earlier, the lands were shown in the name of late Kistaiah alone. Therefore, in view of the registered Will executed in favour of the 3rd respondent, petitioners cannot question the change of entries to the extent of said land only on the ground that they are also entitled for the notice. In any event, having regard to the plea of the petitioners that the said Will is not genuine and fabricated, it is not for the authority under the Record of Rights Act to make an elaborate enquiry into the matter. While it is open for the petitioners to institute appropriate civil suit seeking declaration for the purpose of making entries, the Recording Authority has rightly relied on the registered Will and ordered change of entries. In any event, as it is stated that the petitioners have also filed comprehensive suit in O.S.No. 365 of 1994 on the file of the District Munsif, Ramannapet and that the said suit is still pending consideration, wherein the subject lands were also shown as suit

schedule property, if the petitioners succeed in the said suit, they can also seek amendment of the entries in the record of rights. But, as of now, the claim of 3rd respondent, in the absence of any declaration with regard to the plea of the petitioners that the Will was not genuine, is rightly allowed by the second respondent. Even the appellate authority has considered in proper perspective within the scope of the provisions of the A.P. Rights in Land and Pattadar Passbooks Act, 1971.

For the above reasons, I do not find any ground to interfere in the impugned order. The writ petition, therefore, is dismissed. No costs.

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14.11.2006 **R.SUBHASH REDDY, J.**

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